RECENT IMPORTANT DECISIONS.

BANKRUPTCY—CONCLUSIVENESS OF REFEREE'S FINDING.—A creditor filed a claim with a referee in bankruptcy against the estate of a bankrupt. The trustee thereupon filed an objection setting up the contention that the creditor had received a voidable preference. Upon a hearing, the referee sustained the objection and disallowed the claim. The trustee now brings suit to recover the property which the referee had declared to have been transferred by way of preference. *Held*, the decision of the referee on the question of preference constituted such an adjudication as to render further proof of the facts unnecessary. *McCullock* v. *Davenport Savings Bank*, 226 Fed. 309.

Judgment by a court having jurisdiction of the questions decided operates as an estoppel in a subsequent suit between the same parties as to every question which was actually litigated in the former suit, even though the subsequent suit be based on a different cause of action—*Southern Pacific Railroad Co.* v. *United States*, 168 U. S. 1, 18 Sup. Ct. 18, 42 L. Ed. 355; *Hickman v. Town of Fletcher*, 195 Fed. 907, 115 C.C.A. 595; *Union Central Life Co.* v. *Drake*, 214 Fed. 536, 131 C.C.A. 82. The referee is a judicial officer and the allowance of rejection of a claim is within his jurisdiction as referee. BANKRUPTCY ACT, §55b; COLLIER, BANKRUPTCY (10th ed.) 590. Incidental to this jurisdiction, he has jurisdiction to determine whether the creditor presenting a claim for allowance holds a voidable preference. BANKRUPTCY ACT, §57g. It follows that a referee's decision as to a creditor's preference, in considering a claim presented by the creditor, is conclusive in a subsequent suit brought by the trustee to recover the preference. The principal case is supported by *Moore* v. *Brent*, 220 Fed. 97, 135 C.C.A. 573, affirming 211 Fed. 687; and *Clendening* v. *Red River Bank*, 12 N. D. 51. The latter opinion, in fact, seems to go so far as to say that if a claim is allowed by the referee, the trustee's failure to contest the claim on the ground that the creditor has received a voidable preference, is a bar in a subsequent suit by the trustee to recover the preference. REMINGTON, BANKRUPTCY, 792, adopts this proposition on the authority of this case. But *Buder* v. *Columbia Distilling Co.*, 96 Mo. App. 558 and *Utah Association of Credit Men* v. *Boyle Furniture Co.*, 39 Utah 518, expressly hold otherwise, upon the theory that a different cause of action is presented in the second suit, and the matter controverted in the second suit was not actually litigated in the first. BRANDENBURG, BANKRUPTCY, (3d ed.) 605, and LOVELAND, BANKRUPTCY, (3d ed.) 620 make statements in accord with the holding of these two cases.

BILLS AND NOTES—MARRIED WOMAN'S NOTE.—In an action on a promissory note executed by a married woman, the plaintiff produced the note, gave evidence that the signature was the defendant's, showed the amount

due, and rested, claiming that he had made a prima facie case entitling him to recover. The defendant requested a directed verdict on the ground that the plaintiff must show that the consideration for the note was connected with her separate property. By agreement the case was tried by the court. At the conclusion of testimony, plaintiff requested the trial court to direct a verdict in his favor on the alleged prima facie showing originally made; this was refused and judgment went for defendant. The supreme court affirmed the judgment, holding that the introduction of the note in evidence without proof of a consideration connected with her separate estate, did not establish a prima facie case. *Judd* v. *Judd,* (Mich., 1915), 154 N. W. 31.

The case illustrates one of two different rules. Some courts in considering the question suggest that the proper rule to be applied depends upon the construction as to the scope of the enabling statute. At common law the contract of a married woman was void; her disability was the rule, and the presumption was absolute against her liability. Modern statutes have raised this disability in varying degrees. If a given statute be construed as sufficiently broad to remove the disability generally, with certain exceptions, thus making disability the exception rather than the rule, then a married woman's contract is in the same category as that of a person under no disability, and subject to no different rules. Under such a statute and with a similar set of facts as in the instant case, the plaintiff would have made her prima facie case because a note imports consideration. *Miller* v. *Shields,* 124 Ind. 166; *Grand Banking Co.* v. *Wright,* 53 Neb. 574. One Michigan case, that of *Bank v. Miller,* 131 Mich. 564, rested its decision as to this point on a broad interpretation of the Michigan statute, and is contrary to that of the case at bar. It was rendered, however, without argument, and without reference to the decisions that had established the other rule for Michigan; it has never been followed, and the court in the instant case expressly overruled it. The decision in the instant case construes the Michigan statute as removing the disability, not generally, but only in respect to certain specified matters; thus the plaintiff before making out a prima facie case must show affirmatively that the note was given in respect to a contract which by the enabling statute a married woman had power to make. In Michigan, where a married woman can make no obligation except with reference to her separate property, the statute would seem to be one which recognizes the common law concept of general disability except in the instances provided, and the decision of the instant case, therefore, is in line with the foregoing theory.

BILLS AND NOTES—WAIVER OF NOTICE BY CONSENT TO EXTENSION OF TIME.—The payee sued the indorser on a promissory note which contained an agreement binding the indorser "notwithstanding any extension of time granted to the principal" and "waiving all notice of such extension of time". The payee had extended the note, but when the extension had ended and payment been refused, had failed to give notice of dishonor to the defendant. The defense was based upon this fact, the plaintiff contending there had